

Patent Application
 Attorney Docket No.: 56130.000066
 Client Reference No.: 13259ROUS01U

REMARKS

The Office Action dated March 28, 2005, has been received and carefully considered. In this response, claims 1, 9, 17, and 22 have been amended. Entry of the amendments to claims 1, 9, 17, and 22 is respectfully requested. Reconsideration of the outstanding rejections in the present application is also respectfully requested based on the following remarks.

I. THE ANTICIPATION REJECTION OF CLAIM 33

On page 2 of the Office Action, claim 33 was rejected under 35 U.S.C. § 102(e) as being anticipated by Youngs (U.S. Patent No. 6,600,918). This rejection is hereby respectfully traversed.

Under 35 U.S.C. § 102, the Patent Office bears the burden of presenting at least a prima facie case of anticipation. In re Sun, 31 USPQ2d 1451, 1453 (Fed. Cir. 1993) (unpublished). Anticipation requires that a prior art reference disclose, either expressly or under the principles of inherency, each and every element of the claimed invention. Id. "In addition, the prior art reference must be enabling." Akzo N.V. v. U.S. International Trade Commission, 808 F.2d 1471, 1479, 1 USPQ2d 1241, 1245 (Fed. Cir. 1986), cert. denied, 482 U.S. 909 (1987). That is, the prior art reference must sufficiently describe the

Patent Application
 Attorney Docket No.: 56130.000066
 Client Reference No.: 13259ROUS01U

claimed invention so as to have placed the public in possession of it. In re Donohue, 766 F.2d 531, 533, 226 USPQ 619, 621 (Fed. Cir. 1985). "Such possession is effected if one of ordinary skill in the art could have combined the publication's description of the invention with his own knowledge to make the claimed invention." Id.

Regarding claim 33, the Examiner asserts that "[Youngs] discloses a method and an apparatus for broadcasting radio programming, TV shows, Internet, and etc. over a cellular transmission network (see column 3 and lines 10), comprising: receiving radio programming from a radio programming source through a processor based data network (see figure 3 and item 50, 52); verifying that the radio programming is in an appropriate format for transmission by a cellular transmission network; converting the radio programming to an if the radio programming is not verified (see column 3 and lines 20-29); and appropriate format forwarding the radio programming to the processor based data network for subsequent access and transmission by the cellular transmission network (see column 3 and lines 30-35)."

Applicant respectfully submits that Youngs does not teach or suggest the step of verifying that the radio programming is in an appropriate format for transmission by a cellular

Patent Application
 Attorney Docket No.: 56130.000066
 Client Reference No.: 13259ROUS01U

transmission network or converting the radio programming if the radio programming is not verified, as required by independent claim 33. Rather, as evidenced by the excerpt referenced by the Examiner, Youngs merely discloses a relationship between a wireless network and various program providers, but does not teach or suggest any feature or functionality that verifies or converts the format of radio programming:

Turning now to FIG. 3, there is shown a flow diagram illustrating the general sequence of steps associated with the method of the present invention. The method begins with the wireless network receiving the transmissions from a plurality of media program providers, as shown at block 50. There may be some instances in which the wireless handset 24 can only receive a portion of the media program, such as the audio portion of an audio/video television transmission. In this case, the MSC 22 would only transmit the audio portion for transmission to the wireless handset 24.

See Youngs, Col. 3, lines 20-29.

Applicant respectfully submits that the above excerpt does not teach or suggest the steps of: (1) verifying that the radio programming is in an appropriate format for transmission by a cellular transmission network or, (2) converting the radio programming to an if the radio programming is not verified set forth in independent claim 33.

To the extent the Examiner asserts that Youngs inherently discloses the above steps, Applicant respectfully requests that the Examiner provide a basis in fact and/or technical reasoning

Patent Application
 Attorney Docket No.: 56130.000066
 Client Reference No.: 13259ROUS01U

to reasonably support the determination that the allegedly inherent characteristic(s) necessarily flows from the teachings of the applied prior art. As stated in MPEP § 2112, "In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original). The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. In *re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993).

In view of the foregoing, it is respectfully requested that the aforementioned anticipation rejection of claim 33 be withdrawn.

II. THE OBVIOUSNESS REJECTION OF CLAIMS 1-19 AND 21-23

On page 3 of the Office Action, claims 1-19 and 21-23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Youngs in view of Lee (U.S. Patent No. 6,728,531). This rejection is hereby respectfully traversed.

Patent Application
 Attorney Docket No.: 56130.000066
 Client Reference No.: 13259ROUS01U

As stated in MPEP § 2143, to establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Regarding independent claim 1, the Examiner asserts -- and Applicant agrees -- that Youngs does not teach the step of verifying that the radio programming is in the appropriate format. The Examiner further asserts, however, that Lee teaches verifying that the radio programming is in the appropriate format (see column 6 and lines 42-67).

Although Applicant does not agree with the pending rejection, Applicant has nonetheless amended independent claim 1 to clarify the claimed method and better distinguish the cited references. Independent claim 1 now includes the steps of: providing radio programming in an ~~an~~ appropriate a format

Patent Application
 Attorney Docket No.: 56130.000066
 Client Reference No.: 13259ROUS01U

compatible with a processor based network; verifying that the radio programming is in the appropriate format compatible with a processor based network; converting the radio programming to the format compatible with the processor based network if the format is not provided as such; enabling the radio programming to be accessible over a processor based network, wherein the processor based network is connectable to a cellular transmission network; and transmitting the radio programming over the cellular transmission network after the radio programming is accessed over the processor based network.

Applicant respectfully submits that neither Youngs nor Lee teaches or suggests the steps of "converting the radio programming to the format compatible with the processor based network if the format is not provided as such." Youngs, for example, does not teach or suggest any feature or functionality that verifies or converts. Similarly, Lee does not teach or suggest any feature or functionality that verifies or converts format in the manner claimed. In fact, Applicant respectfully submits that the format referred to in Lee relates to "station" format, not to the claimed format that may or may not be compatible with the processor based network:

It is thus an object of the invention to allow any AM, FM, TV audio, or digital audio broadcast or any Internet audio broadcast to be easily *selected by format (i.e., country, classical, news, rock, talk,*

Patent Application
 Attorney Docket No.: 56130.000066
 Client Reference No.: 13259ROUS01U

etc.) in a vehicle. The user will not need to know the band or frequency of any station to select a broadcast as all types of broadcasts are simply ordered by format. The multimedia device 20 will make the appropriate band and frequency selection when a listener selects a station hierarchically organized under a format category.

It is also an object of the invention to automatically tune to comparable station formats when a vehicle travels out of an area where the existing stations are known to the listener.

It is a further object of the invention that, when a vehicle travels out of an area such that a currently broadcast program fades out, to automatically tune to another station or recorded broadcast playing the same program or at least the same program type.

It is yet a further object of the invention to remotely configure the multimedia device 20 using an Internet gateway network 30 database to download information about all the audio formats and audio broadcasters (e.g., AM/FM/TV/DAB/Internet) possible in a geographic area. The user will choose to show on the radio only those formats and stations he/she desires, blocking out from view all unwanted formats and stations.

See Lee, Col. 6, lines 42-67 (emphasis added).

Moreover, Applicant respectfully submits that neither Youngs nor Lee discloses transmitting the radio programming over the cellular transmission network after the radio programming is accessed over the processor based network. Applicant respectfully submits that Youngs does not teach or suggest any processor based network, much less a processor based network from which radio programming is accessed and subsequently transmitted over a cellular transmission network being accessed.

Patent Application
Attorney Docket No.: 56130.000066
Client Reference No.: 13259ROUS01U

Lee fails to make up Youngs deficiency in this regard as Lee does not teach or suggest any feature or functionality that transmits radio programming over a cellular transmission network after such programming is accessed over a processor based network.

Applicant has made similar amendments to independent claims 9, 17 and 22. Applicant respectfully submits that independent claims 9, 17 and 22 are allowable for at least the reasons set forth above.

Claims 2-8, 10-16, 18-21, and 23-32 are dependent upon independent claim 1, 9, 17, or 22. Thus, since independent claims 1, 9, 17 and 22 should be allowable as discussed above, claims 2-8, 10-16, 18-21, and 23-32 should also be allowable at least by virtue of their dependency on independent claim 1, 9, 17, or 22. Moreover, these claims recite additional features which are not claimed, disclosed, or even suggested by the cited references taken either alone or in combination. For example, claim 29 recites "wherein a broadcast gateway forwards the radio programming to the processor based network." Applicant respectfully submits that Youngs et al. does not teach or suggest a broadcast gateway that forwards radio programming to the processor based network, as expressly recited in claim 29.

Patent Application
Attorney Docket No.: 56130.000066
Client Reference No.: 13259ROUS01U

In view of the foregoing, it is respectfully requested that the aforementioned obviousness rejection of claims 1-19 and 21-32 be withdrawn.

III. CONCLUSION

In view of the foregoing, it is respectfully submitted that the present application is in condition for allowance, and an early indication of the same is courteously solicited. The Examiner is respectfully requested to contact the undersigned by telephone at the below listed telephone number, in order to expedite resolution of any issues and to expedite passage of the present application to issue, if any comments, questions, or suggestions arise in connection with the present application.

To the extent necessary, a petition for an extension of time under 37 CFR § 1.136 is hereby made.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0206, and please credit any excess fees to the same deposit account.

Respectfully submitted,

Hinton & Williams LLP

By: 

Ozzie A. Farres

Registration No. 43,606

Patent Application
Attorney Docket No.: 56130.000066
Client Reference No.: 13259ROUS01U

Hunton & Williams LLP
1900 K Street, N.W.
Washington, D.C. 20006-1109
Telephone: (202) 955-1500
Facsimile: (202) 778-2201

Date: June 28, 2005